IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4206 of 1996

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

A'BAD MUNICIPAL CORPORATION

Versus

ABDUL HAMID GULABKHAN PATHAN

Appearance:

1. Special Civil Application No. 4206 of 1996

MR DEEPAK RAVAL for M/S ANAND ADVOCATES for Petitioner

MR MUKESH H RATHOD for Respondent

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 17/06/2004

ORAL JUDGEMENT

The petitioner has challenged the award of the Labour Court, Ahmedabad dated 23rd February, 1996 made in Reference [L.C.A.] No. 3085 of 1987. By the said award,

Reference of the respondent has been partly allowed and the petitioner has been directed to reinstate the respondent on his original post with continuity of service and to pay to him 25% of the last wages drawn with effect from 7th January, 1987.

1.1. The record of the petition shows that the respondent was working with the petitioner as driver. On 31st January, 1985, he was served with the chargesheet wherein, it was alleged that he had remained absent without leave. In view of the said chargesheet, subsequently departmental proceedings were initiated against him and he was relieved from the service by order dated 6th January, 1987. The respondent in view of his dismissal from the service raised industrial dispute which was sent for conciliation to the Assistant Labour Commissioner. However, the proceedings failed and ultimately Reference under Section 10 of the Industrial Disputes Act came to be made to the Labour Court, Ahmedabad for adjudication of the dispute.

1.2. Before the Labour Court, the respondent filed his statement of claim wherein, he had averred that because of the compelling reasons he had not been able to attend the duty. According to him, he was ill and he had gone to his native place in village near Jaipur in Rajasthan. Further, according to him, since he was at his native place he could not reply to the chargesheet and attend the inquiry proceedings. He, therefore, prayed that the petitioner be directed to reinstate him on his original post with continuity of service and to pay all the incidental benefits including the backwages.

1.3. The said claim was contested by the petitioner by filing written statement at Exh.9. It was averred in the said statement that the respondent who was working as driver in the Central Workshop of the petitioner had overstayed his leave. He had obtained leave for one month with effect from 5th October, 1984. However, even after the said period was over, he had not joined the duty. He was, therefore, served with the notice dated 11th October, 1984 by Registered A.D. post asking him to join immediately, but the said letter was returned with an endorsement "left India". In view of this, chargesheet was forwarded to him by Registered A.D. post on his residential address on 31st January, 1985. The said communication was also returned with the same endorsement. Even subsequent correspondence made at the same address was returned with an endorsement "left India". In view thereof, the proceedings were started and letter intimating commencement of the proceedings

dated 25th September, 1985 was received by the wife of the respondent. However, thereafter also nobody had remained present in the inquiry and ultimately, the impugned order was passed. According to the petitioner, considering the facts and circumstances and the gravity of the misconduct committed by the petitioner of remaining unauthorizedly absent for over two years, no leniency could be shown and the order of dismissal was just and proper punishment which could be imposed upon. Hence, the said order was passed. The respondent did not challenge the validity of the inquiry, but requested to exercise power under Section 11 (A) of the Industrial Disputes Act on the question of quantum of punishment.

2. On the strength of the material that was produced before the Labour Court, it came to the conclusion that considering the nature of the misconduct committed by the respondent coupled with the fact that it was his first offence, the punishment imposed by the disciplinary authority was disproportionate to the gravity of the offence and it was required to be reduced. In view of the same, the Labour Court directed the petitioner to reinstate the respondent on his original post with continuity of service and to pay 25% of the backwages from the date of the dismissal from the service i.e. 7th January, 1987 till reinstatement. It is this award which is now under challenge before this Court.

3. Having heard the learned counsel for the parties and having gone through the record of the petition, it appears that the respondent had unauthorizedly remained absent for a considerable long period of 22 months. Every time the letter was posted to him at his residential address, it was returned with an endorsement "left India". Thus considering the length of absence and also the endorsement, there is no doubt in the mind of this Court that the respondent must have left the country to try his luck elsewhere and he must have returned to India after considerable time. Ofcourse, his say is that he had fallen ill and had to go to his native place near Jaipur in Rajasthan and from there he could not communicate with the petitioner. This does not appear to be true. Be that as it may, the fact remains that for remaining absent without authority or proper leave for twenty two months is certainly act of grave misconduct and it has to be viewed strictly. It also appears from the judgment of the Labour Court that it has shown undue leniency to the respondent. However, the record of the petition shows that the interim relief that was granted by this Court earlier i.e. vide order dated 31st August, 1996 staying the operation of the award was later on

modified by this Court by order dated 19th March, 1997 whereby, it was directed that if the petitioner did not reinstate the respondent, it should comply with the provisions of Section 17-B of the Industrial Dispute Act. It is stated at the bar by Mr. M. H. Rathod learned advocate appearing for the respondent that by virtue of this modification, the petitioner has already reinstated the respondent and he has been now discharging service as driver since then.

3.1. In view of the aforesaid development on account of modification of the interim relief and reinstatement of the respondent in service, almost seven years back, it will not be just and proper for this Court to now disturb the present position and quash the entire award so as to render the respondent jobless. Nonetheless, stay with regard to payment of 25% of backwages is still operating and in view thereof, there is no difficulty for this Court to pass order quashing that part of the award. It is, therefore, directed that the impugned award to the extent it grants 25% of the last drawn wages to the respondent with effect from 7th January, 1987 is quashed and set-aside. The petitioner will now not be required to pay the said amount towards the backwages to the respondent. The petition is, therefore, partly allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

[AKSHAY H. MEHTA, J.]

/phalguni/